

1 Research) and 5601 (Voter Research Group)). This Office concluded after its investigation
2 of the “push poll” MURs that it was not uncommon for telephone carriers to fail to capture
3 the last four digits of the outgoing caller in their records. Thus, without the last four digits of
4 the phone number where the calls emanated from it was unlikely that an investigation would
5 ultimately reveal the source of the calls. This Office contacted the complainant in this matter
6 on several occasions and inquired as to whether there was any additional contact information
7 available on the caller(s) or unknown respondent(s). The complainant informed this Office
8 that he was unable to provide any additional information.²

9 Accordingly, in reviewing the results achieved in the “push poll” investigations, we
10 believe that there appears to be little likelihood of locating the responsible party or parties in
11 this case, and pursuing this matter would require the Commission to expend staff time and
12 resources without the prospect of yielding any useful information. Therefore, in furtherance
13 of the Commission’s priorities and resources relative to other matters pending on the
14 Enforcement docket, the Office of General Counsel believes that the Commission should
15 exercise its prosecutorial discretion and dismiss the matter. *See Heckler v. Chaney*, 470 U.S.
16 821 (1985).


17 **RECOMMENDATION**

18 The Office of General Counsel recommends that the Commission dismiss
19 MUR 5455, close the file effective two weeks from the date of the Commission vote, and
20 approve the appropriate letters. Closing the case as of this date will allow CELA and
21 General Law and Advice the necessary time to prepare the closing letters and the case file for
22 the public record.

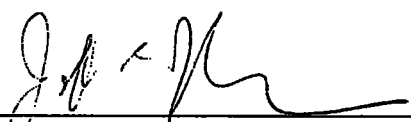
23 _____
² The complainant noted that he was continuing to search for any phone contact information as late as August 2006, but to date has not returned any further inquiries made by this Office.

James A. Kahl
Deputy General Counsel

10/18/06
Date

BY: 

Gregory R. Baker
Special Counsel
Complaints Examination
& Legal Administration



Jeff S. Jordan
Supervisory Attorney
Complaints Examination
& Legal Administration

Attachment:
Narrative in MUR 5455

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2
3
4 **MUR 5455**

5
6 **Complainant:** Randy Frederick,
7 Chairman of the South Dakota Republican Party
8

9 **Respondents:** Unknown
10

11 **Allegations:** Complainant alleges that certain persons or parties were responsible for
12 pre-recorded calls to voters throughout the state of South Dakota on May 25 and 26,
13 2004. The pre-recorded calls allegedly targeted then Congressional candidate Larry
14 Diedrich and his record as a state senator in South Dakota. There was no disclaimer
15 attached to the message nor could the complainant indicate who the responsible party or
16 parties were
17

18 **General Counsel's Note:** This matter
19 similar MURs that were under investigation, which involved unknown persons who
20 made automated "push poll" telephone calls without disclaimers to individuals residing in
21 a number of Congressional districts across the country (see MURs 5584 (Anonymous
22 Phone Calls), 5585 (ITC Research) and 5601 (Voter Research Group)).
23

24 **Date complaint filed:** May 28, 2004
25

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